

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 91-682-W/S & 92-243-W/S - ORDER NO. 92-698 ✓
SEPTEMBER 2, 1992

IN RE: DOCKET NO. 91-682-W/S)	
Application of Realtec, Inc. for Approval)	
of a New Schedule of Water and Sewer Rates)	
and Charges.)	ORDER DENYING
)	RATE INCREASE
DOCKET NO. 92-243-W/S)	AND ORDER
Application of Keowee Key Utilities, Inc.)	DENYING TRANSFER
for Approval of the Transfer of the Water)	
and Sewer Facilities, Territory, and)	
Certificates of Keowee Key Subdivision)	
from Realtec, Incorporated.)	

I.

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on March 5, 1992, by Realtec, Inc. (Realtec or the Applicant) and an Application filed on April 21, 1992, by Keowee Key Utilities, Inc. (KKUI). Realtec's Application sought an increase in rates and charges for water and sewer service provided to its customers in its service area in Oconee County, South Carolina. KKUI filed an Application with the Commission requesting approval of the transfer of the water and sewer facilities, territory and certificates of Realtec to KKUI. By Order No. 92-423, dated June 1, 1992, and issued in the instant Docket, the Commission combined the two

Dockets "for hearing purposes and for all other related matters."

Pursuant to the instructions of the Commission's Executive Director, Notices of Filing and Hearing were timely published in a newspaper of general circulation in the affected area and copies were mailed to all customers affected by the requests.

Steven W. Hamm, the Consumer Advocate for the State of South Carolina (the Consumer Advocate), Mr. Frank L. Kennard (Kennard), and Keowee Property Owners Association (Keowee POA) filed Petitions to Intervene and were made parties of record in these matters.

On July 10, 1992, a night hearing for members of the general public was held by the Commission at the Oconee County Courthouse. The hearing resumed in the Commission's Hearing Room on July 16, 1992, the Honorable Rudolph Mitchell, presiding. Pursuant to S.C. Code Ann. §58-3-95 (Supp. 1991), a panel of three Commissioners was designated to hear and rule on the rate case matter. The panel consisted of Chairman Mitchell and Commissioners Arthur and Butler. A panel was not required for the transfer Docket. Realtec presented its direct case without counsel; Mitchell M. Willoughby, Esquire, and B. Craig Collins, Esquire, represented KKUI; Carl F. McIntosh, Esquire, represented the Consumer Advocate; Mr. Frank L. Kennard appeared pro se; M. John Bowen, Jr., Esquire, represented the Keowee POA; and Marsha A. Ward, General Counsel, represented the Commission Staff.

Realtec presented the testimony of John C. Pulliam to present testimony in support of the rate request. KKUI presented the testimony of Carl Daniel, Vice President of Carolina Water Service,

Inc. of North Carolina to present testimony in support of the transfer. The Consumer Advocate presented the testimony of Philip E. Miller, its consultant, to present testimony regarding the rate request. Mr. Frank Kennard, a customer of the utility, testified on his own behalf. The Keowee POA presented the testimony of David B. Wehmeyer, a customer of the utility and who made several recommendations concerning adjustments to the Company's expenses relating to the rate request. The Commission Staff presented the testimonies of Robert W. Burgess, Rate Analyst for the Water and Wastewater Department, and Norbert M. Thomas, Public Utilities Accountant, to present testimony regarding Staff's audit and investigation. Carl J. Wenz, Director of Regulatory Accounting for Utilities, Inc. and its subsidiaries, including KKUI, presented testimony on rebuttal relating to the rate increase and the transfer Dockets.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon its thorough consideration of the evidence presented by the parties before the Commission, the Applications for the rate increase and the transfer and the applicable law, the Commission makes the following findings of fact and conclusions of law:

1. S.C. Code Ann., §58-5-290 (1976), as amended, imbues this Commission with the authority to change the rates of a "public utility" whenever the Commission finds, after hearing, that such rates are "unjust, unreasonable, non-compensatory, inadequate,

discriminatory or preferential, or in any wise in violation of any provision of law."

2. A public utility is defined by S.C. Code Ann., §58-5-10(3) (1976), as amended, as including "every corporation and person furnishing or supplying in any manner gas, heat (other than by means of electricity), water, sewage collection, sewage disposal, and street railway service, or any of them to the public or any portion thereof for compensation)."

3. Section 58-5-290 also provides that when the Commission determines that a utility's rates are unlawful, the Commission shall determine and fix by order the "just and reasonable" rates to be thereafter charged by the public utility.

4. Realtec, Inc. is a public utility under the provisions of S.C. Code Ann., §58-5-10(3) (1976), as amended.

5. Keowee Key Utilities, Inc. is a public utility under the provisions of S.C. Code Ann., §58-5-10(3) (1976), as amended, and is providing service to the customers of Realtec pursuant to a management agreement since March 6, 1992.

6. Realtec and Utilities, Inc. (the parent company of Keowee Key Utilities, Inc.) entered into a water and sewer asset purchase agreement dated November 26, 1991, and executed by the parties on December 2, 1991.

7. The water and sewer asset purchase agreement contemplated the sale of the Lake Keowee Utility System, including the water supply and distribution system and the sewage collection and treatment system, located in the Keowee Key development, Oconee

County, South Carolina, from Realtec to Utilities, Inc. The agreement contemplated that the closing would take place within ten (10) days upon execution of the agreement.

8. The purchase price reflected in the agreement consists of an initial payment of \$500,000 to be paid at the closing. Within five (5) days following the Commission order approving the purchaser's acquisition of the facilities, Utilities, Inc. was to pay Realtec a final payment in the amount of \$550,000. Additionally, the agreement contemplated that within five (5) days following a final order regarding Realtec's rate request, and provided that the new water and sewer usage rates approved by the Commission "are at least 100% greater than the current rates," the purchaser agreed to pay Realtec a contingent payment of \$450,000. The agreement also provided for Utilities, Inc. to pay to Realtec for a period of five (5) years from the date of closing \$500 for each new water usage customer and \$500 for each sewer usage customer. This payment was called a "connection fee recapture payment" in the agreement. The Commission is of the opinion that these recapture payments basically were the tap fees authorized by the utility to be collected from new customers connecting on to the system. The agreement also provided that availability fees, in which Realtec was entitled to as the developer of the area, were to be transferred to the utility company. Availability fees are those fees collected by the developer (Realtec) pursuant to an agreement with the property owners for undeveloped lots which had water and sewer connections available to them. The amount of availability

fees collected during the test year was approximately \$129,000.

9. The record reveals that the asset purchase agreement was executed on December 2, 1991. According to the terms of the agreement, the closing was to take place ten (10) days thereafter. On March 6, 1992, the utility property of Realtec was deeded to Utilities, Inc./KKUI. On April 21, 1992, KKUI filed its application for Commission approval of the transfer.

10. The present rates and charges for Realtec, Inc. were approved by the Commission by Order No. 88-1, dated January 6, 1988, in Docket No. 86-391-W/S. The Company's present rates and charges are as follows:

WATER

RESIDENTIAL AND COMMERCIAL

Usage up to 3,000 gallons	\$ 6.50/month
All over 3,000 gallons	\$ 1.82/mg
Untreated Water (pumped from Lake Keowee per 10,000 gallons)	\$ 1.00
Tap Fee	\$100.00
System Impact Fee	\$200.00
New Customer Charge	\$ 15.00
Water Reconnect Fee	\$ 15.00

SEWER

RESIDENTIAL AND COMMERCIAL

Flat Rate - Residential	\$ 15.00/month
Commercial - Minimum - 3,000 gallons	\$ 15.00/month
Effluent over 3,000 gallons (Per single family equivalent)	\$ 1.07/mg
Tap Fee	\$100.00
System Impact Fee	\$600.00

11. The Company's proposed rates and charges are as follows:

WATER

Residential and Commercial

Base Charges: (Based on Meter Size)

5/8"	\$ 8.00 per month
1"	\$ 20.00 " "
1.5"	\$ 40.00 " "
2"	\$ 64.00 " "
3"	\$120.00 " "
4"	\$200.00 " "
6"	\$400.00 " "
All Gallonage	\$3.15 per 1,000 gallons
Tap Fee (Plus gross up equal to the income taxes owed on the tap fee)	\$500.00 per SFE
New Customer Charge	\$ 15.00
Water Reconnection Fee	\$ 15.00

SEWER

Residential

Flat Rate per month \$ 31.00

Commercial

Flat Rate per month \$ 31.00

Tap Fee (Plus gross up equal to the income
taxes owed on the tap fee) \$700.00 per SFE

12. The proposed increase in revenues is \$362,617 for both water and sewer services, which amounts to an increase of 111.65% in revenues.

13. Under the proposed increase, the typical residential customer would see a 145.29% increase in his water bill and a 106.67% increase in his sewer bill.

14. Realtec proposed that the appropriate test year upon which to consider its requested increase is a twelve-month period ending December 31, 1991. The Commission Staff conducted its investigation and audit of the Company's books and records using the same test year period.

15. According to the Commission Staff Report, the Company's operating margin after the Commission Staff's accounting and pro forma adjustments is (57.01%). After the proposed increase, the Company's operating margin would be 17.57%. According to the Staff Report, if the Commission approves the transfer, Realtec's operating margin with Staff's accounting and pro forma adjustments before the increase would be (23.68%). With approval of the transfer, and with Staff's accounting and pro forma adjustments, the effect of the proposed increase would create a 26.77% operating margin.

16. The Commission will separately consider the request for a rate increase and the transfer docket in this Order. The Commission will first consider the proposed rate increase since it was filed on March 5, 1992 and will then consider the subsequent transfer docket filed April 21, 1992:

A. The proposed rate increase filed on behalf of Realtec should be denied. The Commission bases its decision on several factors. First, the Commission is concerned that the test year period which reflected the revenues, expenses and investment of Realtec, Inc. is inappropriate to use in setting rates on a prospective basis if in fact the utility is being managed by KKUI

and is proposed to be transferred to KKUI. Presently, KKUI is operating the system pursuant to a management agreement entered into between the parties, but which was outside of the test year period. The Commission is of the opinion and so finds that the operating experience of Realtec has no relevance to the operation of the system under another management. Therefore, the operating experience used to justify the proposed rate increase is not a reliable or appropriate basis for considering the proposed rate increase.

The Company did not adequately support the requested increase in rates and charges. For example, the Company proposed to restructure and change its tap fees. The Company did not provide adequate support to demonstrate to the Commission the cost of making a tap or which portion of the tap fee would be associated with any plant capacity. R.103-502.11 and R.103-702.14 addresses the need for an adequate basis to support a change in tap fees.

...An application for approval of any rate change shall not be considered unless the filing contains appropriate exhibits setting forth all cost criteria justifying the tap fee, setting forth the portion of the tap fee related to installing the service line and the portion related to plant capacity.

R.103-502.11 and R.103-702.14.

The Commission can find no information supplied by the Company which adequately supports the request in tap fees. Therefore, under the Commission's regulations pertaining to sewer and water utilities, the approval of any rate change shall not be considered absent adequate exhibits setting forth the cost criteria justifying

the tap fees. Because of the lack of justification for tap fees, the Commission must deny the rate request.

Furthermore, the Commission is concerned that the customers of Realtec were promised that their rates would not increase as a result of the proposed transfer. On April 3, 1992, KKUI prepared and sent out a letter to its customers which stated in pertinent part:

[A]s a result of the pending transfer, there will be no changes from the previously approved tariff, and therefore, your rates and billing cycle will remain the same.

The testimony reveals that the April 3, 1992 letter was a form letter which is regularly sent to all potential new customers. However, Utilities, Inc. employees sending out this "form" letter did not know that the transfer was not routine. Indeed, it was to go hand-in-hand with a proposed rate increase. The Commission is concerned that the customers of Realtec have been promised that there will be no increase in their rates and the Commission finds that the customers should be given the benefit of the bargain. The customers should not have to bear the burden of any miscommunication between the selling utility and the purchasing utility. Therefore, for the above-stated reasons, the Commission herein denies the rate request of Realtec, Inc. in Docket No. 91-682-W/S.

B. The Commission now turns to the transfer of the Realtec system to KKUI. The Commission has reviewed the asset purchase agreement and the facts surrounding the transfer with

great interest. R.103-504 and R.103-704 (S.C. Code Ann., Vol. 26) require Commission approval for the transfer of public utilities providing sewerage and water services. The regulations provide in pertinent part that:

No existing public utility providing sewerage disposal to the public, or any individual, corporation, partnership, association, establishment or firm undertaking the construction or acquisition of a utility shall hereafter sell, acquire, begin the construction or operation of any utility system, or any extension thereof, without first obtaining from the Commission a certificate that the sale or acquisition is in the public interest, or that public convenience and necessity require, or will require construction or operation of any utility system, or extension....

R.103-504.

No existing public utility providing water to the public, or any individual, corporation, partnership, association, establishment or firm undertaking the construction or acquisition of a utility shall hereafter sell, acquire, begin the construction or operation of any utility system, or any extension thereof, without first obtaining from the Commission a certificate that the sale or acquisition is in the public interest, or that public convenience and necessity require, or will require construction or operation of any utility system, or extension....

R.103-704.

The Asset Purchase Agreement gives the Commission grave concern. First, the Agreement contains a contingent payment that is of concern to the Commission. The contingent payment provides that Utilities, Inc. will pay an additional \$450,000 for the Realtec system if the new water and sewer rates approved by the Commission are at least 100% greater than the current rates. The Commission finds this provision inconsistent with the April 3, 1992

letter and such a "success" factor involved in the combined rate request on sale of a utility system is repugnant to the Commission.

Additionally, the Agreement seems to alter payments that may be appropriately collected by the developer and a utility and changes the entity the funds flow to. Specifically, availability fees collected by the developer are, pursuant to the Agreement, turned over to the utility and tap fees collected by the utility are given to the developer. The Commission is concerned about these provisions, but will deal with them in another proceeding, if necessary.

It also appears from the agreement that the sale was consummated and the closing held months prior to permission being sought from the Commission to transfer the utility system. The record reveals that the property was deeded from Realtec to Utilities, Inc. in early March, 1992, and the Application for the transfer was not filed with the Commission until April 21, 1992. While the Commission is aware that the asset purchase agreement contemplated final approval by the Commission, it appears that everything associated with the transfer had been completed and all that was left for the Commission to do was "rubber stamp" the transfer. The Commission's Regulations do not provide for ex post facto approval. The Commission is of the opinion that the Regulations require Commission approval before the transfer is accomplished. In the Commission's interpretation, that would mean before the closing takes place and the deed transferred, the Commission's approval would be necessitated. By recording the deed

and in effect handing over the utility system to KKUI, Realtec and KKUI violated the Commission's regulations. Because of the violation of the Commission's regulations, the Commission herein denies the proposed transfer and will require that KKUI or Utilities, Inc. deed the property back to Realtec, Inc. within thirty (30) days of the date of this Order, and that verification of such should be filed with the Commission within ten (10) days from the property being redeeded to Realtec, Inc. The Commission's findings relating to the denial of the transfer do not address the fitness of KKUI or its ability to operate the system.¹ Rather, the violations of the Commission's Regulations are so egregious that the Commission must deny the transfer request.

IT IS THEREFORE ORDERED:

1. That the proposed rate increase filed on behalf of Realtec, Inc. is unjust and unreasonable and should be denied. Pursuant to S.C. Code Ann., §58-5-290 (1976), as amended, the Commission finds and concludes that the present rates as granted to Realtec in Order No. 88-1, issued in Docket No. 86-391-W/S, are just and reasonable and should be applied to the Company's customers.

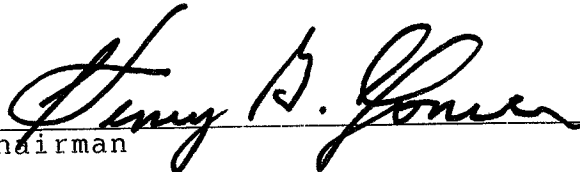
2. That the proposed transfer of the utility system from Realtec, Inc. to Keowee Key Utilities, Inc. is hereby denied and the property deeded by Realtec to Utilities, Inc. or Keowee Key Utilities, Inc. should be redeeded to Realtec, Inc.

1. The Commission does note that KKUI did ensure that the firehydrant problems complained of by the customers of Realtec

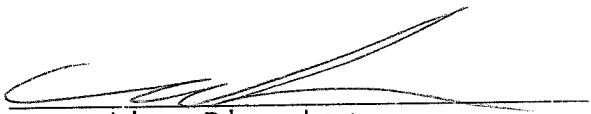
3. That Docket No. 90-519-W/S, which was a former rate request never acted upon by Realtec's predecessor, Lake Keowee Utility Company, should be and hereby is closed.

4. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)